

Brian J. Iller, WSBA #16150
RETTIG FORGETTE ILLER ADAMSON, LLP
6725 W. Clearwater Avenue
Kennewick, WA 99336
Telephone: (509) 783-6154
Fax: (509) 783-0858
bjj@rettiglaw.com

Honorable Lonny R. Suko

Attorneys for Defendant Sandvik Special Metals, LLC

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

COLUMBIA RIVERKEEPER

Plaintiff,

vs.

SANDVIK SPECIAL METALS,
LLC,

Defendant.

NO. 4:15-cv-05118-LRS

STIPULATED
PROTECTIVE ORDER
REGARDING
CONFIDENTIAL
INFORMATION

I. STIPULATION

Plaintiff Columbia Riverkeeper and Defendant Sandvik Special Metals, LLC, the parties to this action (collectively, “the parties”), by and through their respective counsel, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, hereby stipulate and agree to the entry of the following Protective

Order to ensure the confidentiality of proprietary business information, personal information and other information of a sensitive and/or private nature that has been or may be requested in discovery.

STIPULATED AND AGREED this 28th day of July, 2016.

By: s/ Brian J. Iller

By: s/ Brian A. Knutsen

Brian J. Iller, WSBA #16150
Rettig Forgette Iller Adamson, LLP
6725 W. Clearwater Avenue
Kennewick, WA 99336
T. (509) 783-6154
F. (509) 783-0858
bjj@rettiglaw.com

Brian A. Knutsen, WSBA #38806
Kampmeier & Knutsen, PLLC
833 S.E. Main St., No. 318
Portland, OR 97214
T. (503) 841-6515
brian@kampmeierknutsen.com

James J. Dragna
(Admitted Pro Hac Vice)
Morgan, Lewis & Bockius LLP
355 South Grand Avenue, Suite 4500
Los Angeles, CA 90071-3107
T. (213) 680-6400
F. (213) 612-2501
Jim.dragna@morganlewis.com

Paul A. Kampmeier, WSBA #31560
Kampmeier & Knutsen, PLLC
615 Second Avenue, Suite 360
Seattle, WA 98104
T. (206) 223-4088, ext. 4
paul@kampmeierknutsen.com

Attorneys for Plaintiff

Greg A. Christianson
(Admitted Pro Hac Vice)
Morgan Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
T. (415) 442-1000
F. (415) 442-1001
Greg.christianson@morganlewis.com

1 David K. Brown
2 (Admitted Pro Hac Vice)
3 Morgan Lewis & Bockius LLP
4 355 South Grand Avenue, Suite 4500
5 Los Angeles, CA 90071-3107
6 T. (213) 680-6400
7 F. (213) 612-2501
8 David.brown@morganlewis.com

9 **Attorneys for Defendant**

10 **II. ORDER**

11 **1. PURPOSES AND LIMITATIONS**

12 Discovery in this action is likely to involve production of confidential,
13 proprietary, or private information for which special protection may be
14 warranted. Accordingly, the parties hereby stipulate to and petition the court to
15 enter the following Order. The parties acknowledge that this agreement does
16 not confer blanket protection on all disclosures or responses to discovery, the
17 protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the
19 applicable legal principles, and it does not presumptively entitle parties to file
20 confidential information under seal.
21
22

2. "CONFIDENTIAL MATERIAL"

"Confidential Material" shall include the following documents and tangible things produced or otherwise exchanged: annual financial statements, including, without limitation, annual reports, profit/loss statements, balance sheets, income statements, statements of cash flow, notes, and letters or other documents from auditors or that otherwise summarize or analyze operating expenses, revenues and/or assets, which contain any sensitive, confidential or proprietary business, financial, corporate, commercial, or trade secret information; information subject to a legally protected right of privacy; and/or information that would reveal confidential research, development, or personal information.

3. SCOPE

The protections conferred by this agreement cover not only Confidential Material (as defined above), but also (1) any information copied or extracted from Confidential Material; (2) all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Material. However, the protections conferred by this agreement do not cover information that is in

1 the public domain or becomes part of the public domain through trial or
2 otherwise.

3 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4 4.1. Basic Principles. A receiving party may use Confidential Material
5 that is disclosed or produced by another party or by a non-party in connection
6 with this case only for prosecuting, defending, or attempting to settle this
7 litigation. Confidential Material may be disclosed only to the categories of
8 persons and under the conditions described in this agreement. Confidential
9 Material must be stored and maintained by a receiving party at a location and in
10 a secure manner that ensures that access is limited to the persons authorized
11 under this agreement.

12 4.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the designating party,
14 a receiving party may disclose any Confidential Material only to:

15 (a) the receiving party's counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the
17 information for this litigation;

18 (b) the officers, directors, and employees (including in house
19
20
21
22
23

1 counsel) of the receiving party to whom disclosure is reasonably necessary for
2 this litigation, unless the parties agree that a particular document or material
3 produced is for Attorney's Eyes Only and is so designated;

4 (c) experts and consultants to whom disclosure is reasonably
5 necessary for this litigation and who have signed the "Acknowledgment and
6 Agreement to Be Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the
10 duplication of Confidential Material, provided that counsel for the party
11 retaining the copy or imaging service instructs the service not to disclose any
12 Confidential Material to third parties and to immediately return all originals and
13 copies of any Confidential Material;
14

15 (f) during their depositions, witnesses in the action to whom
16 disclosure is reasonably necessary and who have signed the "Acknowledgment
17 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
18 designating party or ordered by the court. Pages of transcribed deposition
19 testimony or exhibits to depositions that reveal Confidential Material must be
20 separately bound by the court reporter and may not be disclosed to anyone
21
22
23

1 except as permitted under this agreement;

2 (g) the author or recipient of a document containing the information
3 or a custodian or other person who otherwise possessed or knew the
4 information.

5
6 4.3. Filing Confidential Material. Before filing Confidential Material or
7 discussing or referencing such material in court filings, the filing party shall
8 confer with the designating party to determine whether the designating party
9 will remove the confidential designation, whether the document can be redacted,
10 or whether a motion to seal or stipulation and proposed order is warranted. If
11 Confidential Material or information derived from Confidential Material are
12 submitted to or otherwise disclosed to the court in connection with discovery
13 motions and proceedings, the same shall be separately filed under seal with the
14 clerk of the court in an envelope marked: "CONFIDENTIAL – FILED UNDER
15 SEAL PURSUANT TO PROTECTIVE ORDER AND WITHOUT ANY
16 FURTHER SEALING ORDER REQUIRED." Prior to filing any such redacted
17 Confidential Material, the party submitting such Confidential Material to the
18 court, if not the designating party, shall provide the designating party a copy of
19 the redacted version to be filed in order to ensure that all necessary information
20
21
22
23

has been redacted.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken

1 designation.

2 5.2. Manner and Timing of Designations. Except as otherwise provided
3 in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
4 otherwise stipulated or ordered, disclosure or discovery material that qualifies
5 for protection under this agreement must be clearly so designated before or
6 when the material is disclosed or produced.
7

8 (a) Information in documentary form: (e.g., paper or electronic
9 documents and deposition exhibits, but excluding transcripts of depositions or
10 other pretrial or trial proceedings), the designating party must affix the word
11 “CONFIDENTIAL” to each page that contains Confidential Material. If only a
12 portion or portions of the material on a page qualifies for protection, the
13 producing party also must clearly identify the protected portion(s) (e.g., by
14 making appropriate markings in the margins).
15
16

17 (b) Testimony given in deposition or in other pretrial or trial
18 proceedings: the parties must identify on the record, during the deposition,
19 hearing, or other proceeding, all protected testimony, without prejudice to their
20 right to so designate other testimony after reviewing the transcript. All
21 depositions, regardless of whether a designation of confidentiality was made on
22
23

1 the record, shall be treated as containing Confidential Material and subject to
2 this Stipulated Protective Order until fifteen (15) days after a transcript of the
3 deposition is received. Any party or non-party may, within fifteen (15) days
4 after receiving a deposition transcript, designate all or portions of the transcript,
5 or exhibits thereto, as confidential.
6

7 (c) Other tangible items: the producing party must affix in a
8 prominent place on the exterior of the container or containers in which the
9 information or item is stored the word "CONFIDENTIAL." If only a portion or
10 portions of the information or item warrant protection, the producing party, to
11 the extent practicable, shall identify the protected portion(s).
12

13 5.3. Inadvertent Failures to Designate. If timely corrected, an
14 inadvertent failure to designate qualified information or items does not, standing
15 alone, waive the designating party's right to secure protection under this
16 agreement for such material. Upon timely correction of a designation, the
17 receiving party must make reasonable efforts to ensure that the material is
18 treated in accordance with the provisions of this agreement.
19
20

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1. Timing of Challenges. Any party or non-party may challenge a
23

1 designation of confidentiality at any time. Unless a prompt challenge to a
2 designating party's confidentiality designation is necessary to avoid foreseeable,
3 substantial unfairness, unnecessary economic burdens, or a significant
4 disruption or delay of the litigation, a party does not waive its right to challenge
5 a confidentiality designation by electing not to mount a challenge promptly after
6 the original designation is disclosed.
7

8 6.2. Meet and Confer. The parties must make every attempt to resolve
9 any dispute regarding confidential designations without court involvement. Any
10 motion regarding confidential designations or for a protective order must
11 include a certification, in the motion or in a declaration or affidavit, that the
12 movant has engaged in a good faith meet and confer conference with other
13 affected parties in an effort to resolve the dispute without court action. The
14 certification must list the date, manner, and participants to the conference. A
15 good faith effort to confer requires a face-to-face meeting or a telephone
16 conference.
17
18
19

20 6.3. Judicial Intervention. If the parties cannot resolve a challenge
21 without court intervention, the designating party may file and serve a motion to
22 retain confidentiality under Local Civil Rule 37.1. The burden of persuasion in
23

1 any such motion shall be on the designating party. Frivolous challenges, and
2 those made for an improper purpose (e.g., to harass or impose unnecessary
3 expenses and burdens on other parties) may expose the challenging party to
4 sanctions. All parties shall continue to maintain the material in question as
5 confidential until the court rules on the challenge.
6

7 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 If a party is served with a subpoena or a court order issued in other
10 litigation that compels disclosure of any information or items designated in this
11 action as “CONFIDENTIAL,” that party must:

12 (a) promptly notify the designating party in writing and include a
13 copy of the subpoena or court order;
14

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by
17 the subpoena or order is subject to this agreement. Such notification shall
18 include a copy of this agreement; and
19

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the designating party whose Confidential Material may be affected.
22
23

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential Material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer

on an appropriate non-waiver order under Fed. R. Evid. 502.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within sixty (60) days after the termination of this action, including all appeals, each receiving party must return all Confidential Material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a Court orders otherwise.

DATED this 3rd day of August, 2016.

s/Lonny R. Suko

LONNY R. SUKO
SENIOR U.S. DISTRICT COURT JUDGE